IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7221 OF 2005

IN

CRIMINAL APPEAL NO. OF 2005

THE STATE OF MAHARASHTRA ..APPLICANT

V/S

BADRE ALAM S/O ABDUL JABBAR ..RESPONDENTS

MRS. M.M. DESHMUKH -APP FOR STATE.

NONE FOR RESPONDENTS.

CORAM: V.M. KANADE, J.

DATE : 12TH OCTOBER, 2007.

P.C.

1. Heard learned APP appearing on behalf of the State. The Appellant is challenging the order dated 16-12-2004 passed by the Metropolitan Magistrate, 36th Court, Mumbai Central. By the said Order and Judgment the trial court was pleased to acquit the Respondent-accused for the offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act. It is alleged that after having received a secret information the Railway Police went to the shop of the accused. They found that 20 special bearing plates were lying in his shop. The property was seized and panchnama was

made. It is alleged that the accused confessed the guilt and accordingly his statement was recorded. Prosecution examined 6 witnesses. It appears that the copy of the seizure panchnama was not handed over to the accused and therefore the trial court did not rely on the said panchnama. Further the confessional statement which was recorded by the police constable was not signed by any panch witness and therefore that statement was also discarded. The expert witness which was examined on behalf of the prosecution also was unable to identify the property as Railway property and he admitted that drawing numbers on the property was not seen by him when he had examined for the first time. In view of all these lacunaes rightly the trial court acquitted the accused. It is admitted position that unnumbered Railway property is auctioned and these properties are very often purchased and sold in the open market. In the absence of any evidence to show that property which was seized was serviceable property the benefit of doubt will have to be given to the accused. Hence no case is made out for grant of leave. Leave refused.

(V.M. KANADE, J)